

1 **Essex Telcom, Inc.**

2 September 6, 2001

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PREFILED REBUTTAL TESTIMONY OF FRED GOLDSTEIN ON BEHALF OF
ESSEX TELCOM, INC.

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Fred Goldstein. My business address is at Arthur D. Little, Inc., 20 Acorn Park, Cambridge MA 02140. This testimony is prepared on behalf of my client and does not necessarily represent an official position of Arthur D. Little, Inc. I am a senior consultant in Arthur D. Little's Communications, Information and Electronics unit.

Q: PLEASE SUMMARIZE YOUR QUALIFICATIONS.

A: I have worked in the telecommunications and data network field since 1977, when I joined the consulting firm of Economics and Technology Inc. I was later Telecommunications Manager at Bolt Beranek and Newman Inc., and served as a telecommunications consultant and as a strategic planner for the network products business of Digital Equipment Corp. At Digital, I represented the company at ANSI-accredited standards bodies dealing with ISDN, Frame Relay and Asynchronous Transfer Mode ("ATM") networks, and I received three patents for ATM congestion management and switching. I later became a member of BBN Corp.'s Network Consulting Practice, largely dealing with dial-up Internet Service Provider ("ISP") activities.

I now belong to the Arthur D. Little practice that deals with telecommunications and information technology. I am the author of the book, **ISDN IN PERSPECTIVE** (Reading MA: Addison-Wesley, 1992) and have taught courses for Northeastern University and National Technological University. I have previously appeared as an expert witness in regulatory proceedings in states including Florida, California,

1 Massachusetts, New Hampshire, New Jersey, Utah and Maryland. I hold a bachelor's
2 degree in Government from Skidmore College.

3 Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

4 A: The purpose of this testimony is to rebut the testimony of Michael T. Skrivan of
5 Gallatin River Telecommunications, Inc. (Gallatin”).

6 Q: ARE YOU FAMILIAR WITH THE CONCEPT OF “VIRTUAL NXX”, AS
7 REFERRED TO IN THIS CASE?

8 A.: Yes. “Virtual NXX” is a common arrangement by which competitive local
9 exchange companies (“CLECs”) provide local telephone numbers to subscribers whose
10 physical premises are not within the exchange area or rate center to which the NXX is
11 assigned.

12 Q: MR. SKRIVAN DESCRIBES VIRTUAL NXX AS “DUPING’ THE
13 INCUMBENT’S SWITCH INTO TREATING AN INTEREXCHANGE CALL AS A
14 LOCAL CALL”. IS THIS ACCURATE?

15 A: No. Virtual NXX is, in fact, a variation of the long-established incumbent local
16 exchange company (“ILEC”) concept of Foreign Exchange (FX) service, and is
17 substitutable for it (Skrivan Deposition, 94). FX arrangements have been used for many
18 years in order to provide a customer with a local number in a given local calling area
19 where it is not physically located. This is useful for many types of businesses. A pizza
20 delivery company, for instance, would want to be a local call from the entire area to
21 which it delivers. A plumbing company would want to be a local call from the area in
22 which it is willing to dispatch its plumbers. As Gallatin agrees, there are customers other
23 than ISPs that would like a telephonic presence in an exchange other than that in which
24 they are physically located, and that’s what FX service “is all about” (Skrivan
25 Deposition, 93-94).

26 Traditionally, and under Gallatin River’s tariff, FX service is provided by having
27 a regular local business line provisioned at the desired “open” end, with mileage-based
28 (leased line) fixed charges for the dedicated circuit needed between the subscriber’s
29 actual wire center (closed end) and the wire center of the open end. Because this is
30 physically based upon a leased line, which in most cases is tarified on a wire center, not

1 rate center, basis, rate-center mileage traditionally used for some toll calculations is not
2 relevant.

3 FX service is not considered long distance service by the ICC, nor, apparently,
4 was it so considered by Gallatin until recently. From Gallatin's General Customer
5 Services Tariff (GR01) (adopted in 1998 (Skrivan Deposition, 111)), note the use of the
6 term "telephone exchange service" in the definition of FX service:

7 "FOREIGN EXCHANGE SERVICE - Telephone Exchange Service furnished through
8 any Central Office of an Exchange other than the Exchange that regularly serves the area
9 in which the Customer is located."

10 I would also note that under the FCC's long-standing separations policies,
11 intrastate retail FX revenue all goes into basic local service (47 CFR 36.212(b)). Gallatin
12 agrees with this (Skrivan Deposition, 24), as well as agreeing that revenue from resold
13 FX services would be posted under local revenues (Skrivan Deposition, 25). I suppose
14 it's *possible* that Gallatin has imputed access to itself when furnishing FX services, but
15 this seems extremely unlikely. And I'd note as a policy matter that it seems inequitable
16 to allow an ILEC to call a service one thing when it provides the service and another
17 when its competitors seek to provide the same or essentially the same service.

18 It would not surprise me if Gallatin River, like many ILECs, would prefer that FX
19 service were to be treated like toll, but it cannot unilaterally impose that treatment upon a
20 CLEC when the ICC has held otherwise. In my opinion, FX is not toll and is not
21 exchange access.

22 Q: HOW IS FOREIGN EXCHANGE SERVICE TYPICALLY PROVISIONED IN
23 A HOST/REMOTE CLUSTER?

24 A: Local exchange carriers often use remote switching units to serve small wire
25 centers. In the instant case, Gallatin provisions Dixon as a host switch while its other six
26 wire centers within LATA 364 are remotes of the Dixon host. Directory numbers are
27 fully portable within a host-remote cluster. So if a subscriber in Dixon wanted, for some
28 reason, a Grand Detour number, Gallatin would not need to provision a leased circuit
29 from Grand Detour back to Dixon; rather, a Grand Detour number would simply be
30 assigned to the Dixon subscriber. The converse is also true; a Dixon number could be

1 assigned to a subscriber in Grand Detour, or for that matter one in Savanna, which is not
2 within Dixon's local calling area.

3 Q: HOW IS TRUNK INTERCONNECTION TYPICALLY PROVISIONED IN A
4 HOST/REMOTE CLUSTER?

5 A: In most cases, trunks are brought to the host switch. The remotes are trunked to
6 the host. The host/remote cluster looks like a single switch to the rest of the network.
7 The remotes might have emergency stand-alone capability, with some limited trunking,
8 but intercarrier trunking is typically centralized at the host. In this sense, Dixon *is* the
9 switch location for Savanna, Mt. Carroll, and the rest of Gallatin River's exchanges in the
10 LATA.

11 Gallatin's own access tariff reflects that call processing control for remotes is
12 provided by the host. Section 2.6 (Definitions) contains the following definition:

13 "Host Central Office

14 The term "Host Central Office" denotes an electronic local Telephone Company End
15 Office where Telephone Exchange Service customer station loops are terminated for
16 purposes of interconnection to each other and to trunks. Additionally, this type of End
17 Office contains the central call processing functions which service itself and its Remote
18 Switching Modules."

19 Skrivan recognizes as well that the Dixon host performs central call functions for
20 the Nelson, Harmon, Grand Detour, Savanna, Mt. Carroll, and Thompson remotes
21 (Skrivan Deposition, 28-29).

22 Q: HOW DOES A CLEC'S "VIRTUAL NXX" SERVICE COMPARE TO
23 HOST/REMOTE?

24 A: A CLEC typically has one switch to cover a large geographic area. To some
25 extent this is an economic decision: It is not economical for a CLEC to deploy as many
26 switches as an ILEC has, because a CLEC has far fewer customers on a per-square-mile
27 or per-wire-center basis. To some extent this also results from a regulation: the Telecom
28 Act and FCC regulations do not require ILECs to permit switches to be collocated, so
29 CLECs have developed network architectures that resemble host/remote, with the

1 switching function (host) on CLEC premises and remote nodes or multiplexors of some
2 kind in the collocation rack.¹

3 Given the typical mileage-to-host based nature of FX service, a “Virtual NXX”
4 service is simply an FX service in which the wire center mileage component is zero. The
5 CLEC incurs no extra cost in selecting any one NXX over another, or for that matter in
6 provisioning numbers with multiple NXXs in the same hunt group. Since a CLEC
7 operates by the rules of the competitive market, in which prices tend to follow cost, the
8 CLEC naturally offers intra-switch FX at a cost of zero or at least near-zero.

9 Q: IS A VIRTUAL NXX CALL REALLY A CASE OF INTEREXCHANGE
10 CARRIER ACCESS?

11 A: Of course not. While Mr. Skrivan says that it “amounts to carrier access without
12 compensation”, he is totally mischaracterizing the service. He is attempting, in effect, to
13 declare that all calls are toll unless specifically made local. That completely misses the
14 point. From Gallatin’s cost point of view,² what happens on Essex’ side of the
15 Interconnect Point (IP) is absolutely transparent. There is no toll call involved: No per-
16 call billing takes place, no toll revenue is exchanged, and the end user *perceives* that the
17 call is (correctly) “local”.³

18 Mr. Skrivan’s analysis appears to hinge on a “value of service” concept which
19 seems to hold that any call that is carried, in any manner, across an exchange boundary
20 should pay, if not retail toll rates, at least wholesale usage rates. He applies this both to
21 calls whose end points are not within the same exchange area *and* to calls whose end
22 points may be within the same local exchange area, but whose midpoints are not,
23 provided, of course, that it is a CLEC, and not Gallatin, whose midpoint is not. For
24 example, he describes a common Virtual NXX application by which the ISP is in the
25 same physical exchange area as the CLEC switch and has NXX codes in five other

¹ I note the recent FCC decision that allows switches to be collocated *if* they do not take up more floor space than a non-switching remote. This is applicable to the newest generation of very compact switches, but does not change the economic considerations or, for that matter, the engineering advantages of centralized switching.

² Skrivan agrees. (Skrivan Deposition, 85, 87.)

³ Technically, under the recent FCC reciprocal compensation ruling, many of these calls are “information access”, which are to be billed as local, but which have a unique federal jurisdictional status. The caller is,

1 exchanges. (Skrivan Testimony, 9)He mischaracterizes the calls as “five of the six calls
2 are actually interexchange, toll calls”. Of course there are no tolls, nor, per the ICC’s
3 previous decision, is there reciprocal compensation paid.

4 He also implies that calls to Essex customers who are physically in Sterling
5 should be treated as toll calls, rather than local, even though they are interconnected to
6 Gallatin’s network exactly as other local calls would be. He notes that Gallatin “would
7 be losing its appropriate carrier access charges” for such calls. Of course it is Essex, not
8 Gallatin, who is paying for the haul from the Gallatin IP at Dixon to the Essex switch in
9 Sterling. He suggests that because Essex is allowing collocation of its ISP customers’
10 modems in Sterling, rather than physically hauling their PRIs back to Dixon, Gallatin
11 customers’ calls to an Essex-customer ISP should be considered toll. This, of course,
12 ignores the whole idea of FX service, in which dedicated bandwidth is allowed to replace
13 switched bandwidth.

14 There are ample examples of Internet Service Providers in Illinois who are using
15 intraLATA foreign exchange service in order to extend local calling areas beyond the
16 local calling area of the ISP’s physical point of presence. This traffic is not subject to
17 either reciprocal compensation or access contributions; the ICC and FCC have both ruled
18 clearly on this subject.

19 Q. DOES MR. SKRIVAN’S DEFINITION OF “TOLL” COMPORT WITH
20 CURRENT USAGE?

21 A. No; he uses the term far more broadly. From Skrivan’s deposition at 79:

22 “I define toll similarly to the way I’ve defined interexchange. It’s between exchanges,
23 and it’s not local. For example, I use the term toll with a private line such as a toll private
24 line that goes from one local exchange area to another and is not a local private line.”

25 Clearly, private lines are not subject to toll charges in the sense that long-distance
26 telephone calls are, so he’s using “toll” to refer to a broad class of telecommunications
27 that is for whatever reason not within the tariff definition of a “local call”. By this
28 broader definition, FX calls are “toll”, but not subject to treatment as “long distance” or

of course, unaware of this distinction; he or she is, however, very much aware that there is no toll charge

1 “exchange access service”. Mr. Skrivan’s definition is simply his own, not the one that
2 matters.

3 Q: THEN DOES SKRIVAN ACCEPT THAT ALL CALLS THAT BEGIN AND
4 END WITHIN THE SAME EXCHANGE AREA SHOULD BE TREATED AS
5 LOCAL?

6 A: He even refuses to accept this, in his example of what would happen if Essex had
7 a dialtone customer in a rate center (“D”) other than the one in which its switch and IP
8 was located (“C”). He correctly notes that the call would be switched by the ILEC both
9 in rate center D (the physical location of both end users, where Gallatin presumably has a
10 switch) and C (the tandem and IP location). He gives the example of a call between
11 Gallatin and Essex customers in Savanna, with the IP in Dixon. He then suggests that
12 Essex should either pay for interoffice transport between Savanna and Dixon, or establish
13 additional IPs. So in this case, the call is obviously local, because both end users are in
14 Savanna, but Gallatin wants additional payment for intraLATA haul to the IP anyway.
15 Yet Gallatin’s own network probably hauls many local interoffice calls through Dixon,
16 because Dixon is the host switch for the Savanna, Mt. Carroll, Grand Detour, Harmon,
17 Nelson, and Thomson remote switching units, and the regional tandem is also Dixon.⁴
18 There is obviously ample fiber optic transmission capacity to Savanna, a Nortel Remote
19 Switching Center – SONET. Indeed establishing an IP in Savanna might well cost
20 Gallatin *more* than simply hauling the call to the host in Dixon, where most trunks are
21 located, and where trunk capacity is probably less costly.

22 Q: WHAT WOULD BE THE IMPACT OF GALLATIN’S POSITION UPON
23 AVAILABILITY OF INTERNET SERVICES IN RURAL AREAS?

24 A: Skrivan admits (Skrivan Testimony, 10) that “Dial-up calling is only cost-
25 effective for the customer if the cost of the call is not time sensitive.” So if there were no
26 “local” ISP numbers, users would be deprived of the benefits of affordable Internet
27 access that the vast majority of Americans enjoy. So the relevant question becomes one

for the call.

⁴ When a Gallatin end user in Grand Detour calls a Gallatin end user in Harmon, for example, the call is routed through Dixon. (Skrivan Deposition, 29-30.)

1 of methodology. How can an ISP establish a local presence? What can a telecom
2 company do to facilitate this?

3 Dial-in modem facilities today must be provided using digital interfaces into
4 digital central office switches. That is a requirement of the now-standard V.90 modem
5 protocol; server-side modems with analog interfaces are limited to 33.6 kbps, while
6 digital interfaces can go up to 53 kbps. In addition, as a practical matter, only digital
7 interfaces of T1 or larger make any sense for an ISP. These go into a Remote Access
8 Server (RAS), which integrates the modem and access-router functions. While small
9 (one-PRI) RAS systems exist, it is generally more economical and easier to manage
10 larger ones; current high end systems, such as the Nortel Networks CVX-1800, can
11 support 2688 modems in a single cabinet that fits into a quarter of a standard rack. It is
12 unrealistic for an ISP to rent closets behind drugstores in small towns in order to put a
13 dozen analog modems with "local" phone numbers, when a Virtual NXX or FX service
14 allows modern high-performance RAS equipment to be installed in a proper ISP server
15 environment.

16 In a typical Internet Access Service Provider ("ISP") environment, the data
17 bandwidth to the retail ISP data center is roughly 1/10 to 1/15 of the ISDN PRI or
18 channelized T1 PSTN bandwidth going in to the RAS, because the average modem uses
19 only 4000-6000 bps during a session. An ISP Point-of-Presence might thus have a T1 of
20 data bandwidth going back to the ISP for every 200-350 modems. And a typical ISP will
21 provision one modem for every 8-15 subscribers, depending on average usage. So a PoP
22 needs to have, say, 1600 to 5000 dial-up subscribers just to make efficient use of the first
23 T1 of Internet bandwidth. An ISP will typically, however, provision at least two T1
24 circuits, for redundancy, or use a high-bandwidth data transport service such as ATM
25 (which is generally not available, at least at reasonable cost, in rural areas). This sets the
26 parameters for what could realistically be considered a minimum-sized Access ISP. I am
27 aware of ISPs other than Internet Services of Northern Illinois who operate this type of
28 setup in rural areas, using either CLEC Virtual NXX or ILEC FX service to aggregate
29 sufficient territory.

1 Some local calling areas are too small to sustain a physically local ISP on this
2 basis. The Savanna-Mt. Carroll-Thomson area all together appears to have (based on
3 FCC estimates) about 6000 telephone lines. And (per Skrivan) these are separate local
4 calling areas; Thomson itself has fewer than 1000 phones in its local calling area. Should
5 an ISP be expected to rent real estate in Savanna, Thomson and Mt. Carroll simply to
6 provide “local” service when, *at no additional cost to Gallatin*, the ISP could collocate at
7 a regional PoP, such as Sterling? Gallatin admits that there are additional costs involved
8 in ISPs establishing a local presence in every rate center where they have customers
9 (Skrivan Deposition, 91-92). Skrivan doesn’t know, however, whether requiring a local
10 presence in every small exchange would be “good policy” (Skrivan Deposition, 90).
11 ISPs would be more likely to simply avoid providing service to rural communities. In my
12 mind, that’s bad policy.

13 But we do observe that Gallatin River has its own “captive” ISP service, and that
14 service, according to Skrivan’s response to Essex’ Data Request No. 15 and his
15 deposition at page 77, answers its Savanna number *in Dixon*. Skrivan admits that
16 “Gallatin does essentially the same thing for its affiliated ISP as Essex has indicated it
17 wants to do for its affiliated ISP.” (Skrivan Deposition, 78). So it appears that
18 Gallatinriver.net is itself benefiting from a “virtual NXX”, or at very least an intracluster
19 FX line, at the same time that Gallatin is attempting to deny Essex the right to do the
20 same thing. The net result of Gallatin’s position would be a monopoly on wireline
21 Internet service in its smaller local calling areas, because it is simply uneconomical for an
22 unaffiliated ISP to install a RAS in a location with only 750 or even 3000 telephones in
23 every local calling area.

24 Q: IS ESSEX TELCOM NOT REALLY A TELECOMMUNICATIONS CARRIER,
25 AS GALLATIN ASSERTS?

26 A: Of course Essex Telcom is a telecommunications carrier. Gallatin notes that
27 Essex’ *first* customer for switched service is Internet Services of Northern Illinois, which
28 shares common ownership with Essex. But is it not logical that a startup business find its
29 first customer among “family and friends”? It is logical, as are the facts that in some
30 cases CLECs can be certificated for years without making attempts to interconnect (or

1 succeeding at interconnecting) with specific ILECs and that it takes some time to
2 assemble the key components necessary to provide local exchange service once one
3 begins to do so. I disagree with Skrivan's apparent conclusion (or perhaps inference,
4 since they are only really asserted as answers to a question about Essex' marketing)
5 (Skrivan Testimony, 21) that these facts somehow indicate that Essex is not a
6 telecommunications carrier.

7 As Skrivan suggests, the Illinois Public Utility Act excludes from the definition of
8 "telecommunications carrier" "a company or person which provides telecommunications
9 services solely to itself and its affiliates or members ..." There are, however, at least
10 three problems with Gallatin's attempt to impose that test in the manner it suggests.

11 First, there is a problem, I submit, with imposing the test at an isolated and very
12 early point in time, particularly given the difficulties likely to occur with ILEC
13 interconnection, especially for the first CLEC entrants into a market. As I have suggested
14 above, it is entirely likely that a CLEC will start by providing services to affiliates, while
15 marketing to non-affiliates, and that there is likely to be a point in time at which services
16 to non-affiliates, though planned, have not actually commenced. However, as Skrivan
17 notes, Essex has given Gallatin LOAs for 3 of Gallatin's current customers – a clear
18 indication that Essex is attempting to serve non-affiliates.

19 Second, the Illinois Act does not appear to permit, as Skrivan seems to suggest,
20 that one look at a *specific* telecommunications service in isolation from the *totality* of
21 telecommunications services provided in order to make a judgement about whether
22 *services* are being provided solely to affiliates. Skrivan suggests (Skrivan Testimony, 3-
23 4) that we should examine "*the service* that Essex asked Gallatin to provision" (the
24 installation of trunk groups), determine that *that specific service* "was solely for the
25 purpose of providing service to [Internet Services of Northern Illinois]," conclude that
26 *that service* "was not service that Essex Telecom intended to provide as a
27 telecommunications carrier," and therefore opine that Essex is not a telecommunications
28 carrier. I do not see any such "service-by-service" test in the Illinois Act, not do I believe
29 that one would be useful as a matter of policy, since it would lead to a blizzard of service-
30 specific examinations of proposed services of CLECs and add little or nothing to a test

1 whose real purpose is to decide whether a company or individual is really in the business,
2 as a whole, of providing telecommunications services to others.

3 Third, and most conclusive, as Gallatin admits, *Essex unquestionably provides*
4 *telecommunications services to non-affiliates*. Essex already provides advanced
5 telecommunications service (DSL) to a number of unaffiliated parties. Gallatin admits
6 that the services are provided, but initially incorrectly characterized this activity as a non-
7 telecommunications service: “DSL services are information services, not
8 telecommunications services” (Skrivan Testimony, 21). Gallatin has now, apparently,
9 retracted this contention and agrees that DSL services are telecommunications services
10 (Skrivan Deposition, 109).

11 In fact, DSL services are advanced *telecommunications* services (and are so
12 defined in the Illinois Public Utility Act), which are largely *utilized by* information
13 service providers. DSL service is provided by LECs, such as Covad, not by ISPs or other
14 information service providers, who are not granted statutory access to the unbundled
15 local loops or ILEC collocation space needed for DSL provision.

16 Further, I understand that Essex also now provides switched services to an
17 unaffiliated ISP, and has contracts to provide T1 based service to two unaffiliated
18 businesses.

19 Essex Telcom is the first CLEC in the LATA, or at least the first one to have a
20 switch listed in the LERG. This provides a good long-term opportunity for Essex to
21 grow, and acquire a diverse customer base. But Gallatin did not even provide
22 interconnection until very recently, which certainly has made it hard for Essex to find
23 customers. I also note that the unbundled local loop and dedicated transport rates in the
24 Gallatin-Essex interconnect agreement are very high, making it hard to compete on basic
25 switched voice services. Essex will need to develop packages of services that make
26 economic sense. I believe that this is possible, but I also believe that it would be a lot
27 easier and happen a lot faster if Gallatin’s UNE rates were closer to the norm.

28 Q: IS GALLATIN LOSING MONEY ON TRANSPORT AND ACCESS COSTS,
29 AS SKRIVAN ASSERTS?

1 A: Not in the least. Gallatin is falling back on some well-known exaggerations that
2 have fueled opponents of competition in the telecommunications industry since, well, at
3 least the *Carterfone* decision, which was fought to the bitter end by Gallatin's sister
4 company, MebTel. Gallatin is confusing, or at least attempting to create confusion
5 between, *opportunity* costs with *actual* incurred costs. These opportunity costs are merely
6 *theoretical* potential profits that are not made, not *actual* costs that are incurred. For the
7 most part, these "costs" are really just reduced revenue from competitive entry. The Act
8 was passed to obtain exactly this result.

9 The fact is that the ICC has already rejected this cost argument by holding that an
10 ILEC incurs the same costs to deliver a call to a customer that is not physically located in
11 the local calling area of that NXX code as it does to one that is physically located in the
12 local calling area, since it carries the call the same distance and incurs the same transport
13 costs.⁵ Gallatin apparently now admits that this is the case (Skrivan Deposition, 85, 87),
14 and concedes that this is a revenue, not a cost issue (Skrivan Deposition, 87).

15 The underlying notion behind the Telecommunications Act, and behind the ICC's
16 various related decisions, is that local telecommunications services can be provided on a
17 competitive basis, with ILECs and CLECs acting as peers. Because ILECs have
18 considerable advantages as a result of their former monopoly status ("former" does not
19 seem to apply yet in Gallatin's territory), they are under certain obligations to CLECs,
20 such as a requirement to interconnect, and a requirement to provide UNEs at cost-based
21 rates. While there is some question about the long-term status of the FCC's selected
22 TELRIC definition of "cost-based", it is clear that the appropriate costs are more along
23 the lines of a loaded incremental model, wherein the ILEC will make a modest but
24 positive profit on wholesale UNE sales to CLECs.

25 What is certainly not provided for is the so-called Efficient Component Pricing
26 Rule (ECPR), a method of pricing in regulated near-monopoly markets that is designed to
27 *protect* the monopolist's profit margins when another participant takes some market

⁵ *Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Docket 00-0027, Arbitration Decision (May 8, 2000) at 17-18.

1 share. Under ECPR, competitors would pay prices to the incumbent which cover both
2 the incumbent's costs and its lost profits. Gallatin's view of its losses seems consistent
3 with an ECPR view of the world, not with any kind of incremental-cost model that would
4 be consistent with a competitive marketplace. The FCC rejected ECPR in paragraph 709
5 of the *Local Competition Order*.

6 Gallatin also seems to have decided that it would be nice if Internet calls could be
7 made on a toll basis. This is not a realistic possibility, but more of an "if wishes were
8 horses, then beggars would ride" fantasy, as they admit that the ISP business requires
9 local calls: "Dial-up calling is only cost-effective for the customer if the cost of the call is
10 not time sensitive. Therefore, for an ISP to expand its area of service, it needs to
11 establish a "local" presence within the local calling scopes of all of each of its dial-up
12 customers." [Skrivan Testimony, 10] Thus, even Gallatin understands there is no
13 realistic issue of having access charges apply to these calls, and there are no "lost" access
14 revenues.

15 Q: IS GALLATIN REALLY MOSTLY CONCERNED WITH ITS OWN
16 POTENTIAL COMPETITIVE LOSSES?

17 A: It seems to be the case that Gallatin's major problem is with the loss of its
18 monopoly. This will lead to competitive losses, and will possibly put pricing pressure on
19 Gallatin. In a monopoly situation, if an ILEC's costs are out of line with its prices, then
20 certain of its services may generate inordinate profits (monopoly rents) while other
21 services may generate losses that are covered by the monopoly profits elsewhere. Such
22 pricing schemes are difficult to sustain once competition begins. A shrewd competitor
23 will seek to compete with the most profitable (overpriced) products, leaving most of the
24 least profitable (underpriced) sales to the incumbent. When the incumbent loses a sale to
25 a competitor, then it has competitive losses. This is the way business normally works.
26 Businesses have many ways to deal with this, including repricing, better marketing, and
27 cost controls.

28 Skrivan claims that "Since Essex Telcom and its affiliate are getting what
29 amounts to a free ride, the lost carrier access charges and the cost of the interoffice
30 transport must be borne by other customers." (Skrivan Testimony, 13.) But there are no

1 lost access charges, and the ICC rejected the “free ride” argument in the Focal
2 arbitration.⁶ Skrivan later admits that there is no cost difference to Gallatin between
3 delivering a call to a customer that is not physically located in the local calling area of
4 that NXX code and delivering a call to one that is physically located in the local calling
5 area (Skrivan Deposition, 85, 87). And the cost of interoffice transport is being borne in
6 the manner prescribed by the FCC and the ICC: the originating carrier delivers the calls
7 that it originates to the IP, which is somewhere within that ILEC’s service area in the
8 LATA.

9 Q. IS ESSEX TELCOM’S PREFERRED METHOD OF INTERCONNECTION A
10 RELATIVELY COSTLY OPTION FOR GALLATIN?

11 A. To the contrary, CLECs are allowed considerable leeway in their
12 interconnection. Essex has chosen a method that is, if anything, as conservative as
13 possible, imposing the least possible cost upon Gallatin. For instance, a CLEC is allowed
14 to specify its IP as being anywhere in the LATA within the ILEC’s territory. Essex
15 could, for instance, have requested an entrance facility at a convenient radio tower in,
16 say, Thomson, from which Essex could send the signal back via microwave to its Sterling
17 hub. But in this case, Essex is meeting Gallatin at its Dixon host and tandem switch
18 location, and not even requesting reciprocal compensation for the calls that it is
19 delivering on behalf of Gallatin’s callers. This minimizes Gallatin’s costs. At worst,
20 Gallatin is suffering competitive losses. Essex Telcom’s customers will be paying Essex
21 for service, rather than Gallatin, so Gallatin’s retail profits from customers who go
22 elsewhere will be lost. They will have to bear their half-call costs for calls made by their
23 subscribers to the Essex IP, but those costs are virtually the same no matter whether
24 Essex puts its switch in Dixon, or in Sterling, or has multiple switches scattered around
25 Gallatin’s territory. The costs are the same regardless of the physical location of Essex’
26 customer, as even Gallatin admits (Skrivan Deposition, 85, 87).

27 Indeed, the current arrangement is probably the lowest-cost option, even
28 compared to having multiple IPs, because trunk ports at the host tend to be less costly

⁶ Skrivan testified in deposition that Gallatin is not demanding an amendment to the parties’ interconnection agreement, and is not asking the ICC to rule differently in this case than it did in the Focal or Level 3 arbitrations. (Skrivan Deposition, 108-109.)

1 than trunk ports at remote nodes. It is unusual for interconnection to be made at a remote
2 node; Gallatin's access tariffs apparently require interconnection at the host or tandem,
3 and include a mandatory host-remote usage rate element when the call goes to a remote.

4 Gallatin threatens that its local rates "are likely to be impacted" if Essex' request
5 were granted. But such claims are old hat, reminiscent of what was threatened in the
6 1970s if customers were allowed to own their own answering machines, PBX systems,
7 modems or telephone sets. Similar charges were later levied against long distance
8 competition. Competitive loss is not always pleasant but in a competitive environment,
9 vendors need to learn to cope with competitive loss.

10 Q: IS ESSEX WASTING "SCARCE NUMBERING RESOURCES"?

11 A: No. It is my understanding that Essex is returning some of its prefix codes, and it
12 would be content to have number pooling, so that it received only 1000 numbers at a
13 time. But Essex needs number resources in each local calling area in order to meet
14 demand for foreign exchange numbers that are local to a given area, and will need
15 number resources in order to expand into local dialtone delivery in the future.

16 Gallatin, on the other hand, seems to have more prefix codes that it needs, but
17 apparently realizes that (in its case) it's excusable – "because under the current
18 numbering scheme there's not an alternative." (Skrivan Deposition, 100-102). Why the
19 same reasoning does not apply to Essex is unclear.

20 Harmon and Nelson, for instance, each have fewer than 700 telephones, and their
21 local calling areas are identical to Dixon's. Why do they even need their own prefix
22 codes? Why are there so many rate centers nowadays, especially ones, like Nelson and
23 Harmon, whose local calling areas are non-unique? Few toll plans are mileage-based any
24 more, while leased-line rates are based on wire center, not rate center, mileage anyway.
25 The current rate center map is a relic of the era of electromechanical switches. Yet it is
26 the ILEC who controls it. Essex merely concurs in it.

27 This concurrence does not, however, lead to the conclusion that Gallatin suggests
28 – that "Virtual NXX" calls must be treated as toll calls. While Essex may have concurred
29 in Gallatin's local calling areas, it seems both clear and reasonable, given the history of
30 FX services and the actual costs involved, that it can reasonably look at the NXXs

- 1 associated with those calling areas, and not to the physical locations, to determine that
- 2 “Virtual NXX” calls are not toll.